

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NEW YORK**

In Re:

DANSVILLE PROPERTIES, INC.

BK. NO. 94-22537

Debtor.

**Lacy, Katzen, Ryen & Mittleman
David D. MacKnight, Esq.,
Of Counsel
130 East Main Street
Rochester, New York 14604**

**Office of the U.S. Trustee
Trudy A. Nowak, Esq.,
Senior Attorney/Advisor
100 State Street, Room 6080
Rochester, New York 14614**

BACKGROUND

The Debtor in Possession in this Chapter 11 case, Dansville Properties, Inc., (the "Debtor") has made a motion to be authorized to retain the firm of Lacy, Katzen, Ryen & Mittleman ("Lacy, Katzen") as attorneys for the Debtor.

The required Affidavit of No Conflict filed by Lacy, Katzen with the Motion sets forth at paragraph 3 that:

The Debtor owes Lacy, Katzen, Ryen & Mittleman \$12,164.20 for services heretofore rendered which remain unpaid. There is no security for this claim. This claim has priority over sums due to Waldemar Mazur and Ruth Mills who are or were insiders of the Debtor and who are obligated to Lacy, Katzen, Ryen & Mittleman for the sums due from Debtor to Lacy, Katzen, Ryen & Mittleman. The claim should have no effect on any creditor even in the event of a liquidation.

The Office of the United States Trustee has filed a letter with the Court objecting to the appointment and setting forth its position that no attorney may be retained by a debtor in possession if there are pre-petition sums owed to that attorney which are not waived.

Lacy, Katzen filed a Response to the opposition which indicated that: (1) the only assets of

the estate are forty-two acres of real property located in Dansville, New York which are improved by several buildings in substantial need of rehabilitation before they can be used; (2) a general unsecured creditor furnished the filing fee and a retainer for Lacy, Katzen; (3) another unsecured creditor paid franchise tax arrears to reinstate the Debtor as an active corporation and worked with Lacy, Katzen in filing the petition; (4) an additional unsecured creditor is the Debtor's President who assisted in preparing the petition and the Debtor's schedules; (5) the real property owned by the Debtor is encumbered by a real property tax lien and a mortgage held by the President's mother; and (6) except for the real property tax creditor and one unsecured creditor, all of the Debtor's creditors either assisted Lacy, Katzen in filing the petition or requested that it act on their behalf. The Response further indicated that on the facts and circumstances of this case, Lacy, Katzen did not believe that its acting as the attorney for the Debtor would result in a material conflict.

DISCUSSION

Section 327(a) (applicable to a debtor in possession) provides that:

Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title.

Section 101(14) provides in part that:

"disinterested person" means person that—

(A) is not a creditor, an equity security holder, or an insider.

